



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 DEPARTMENT OF LABOR

3 OFFICE OF WORKERS' CLAIMS

4 (Amendment)

5 803 KAR 25:012. Resolution of medical disputes.

6 RELATES TO: KRS 342.020, 342.035, 342.125, 342.260, 342.325, 342.735

7 STATUTORY AUTHORITY: KRS 342.020, 342.260(1), 342.735(1)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the  
9 Executive Director [~~Commissioner~~] of the Office [~~Department~~] of Workers' Claims to  
10 promulgate administrative regulations necessary to implement KRS Chapter 342. KRS  
11 342.325 requires that a question arising under KRS Chapter 342 which is not settled by  
12 agreement of the parties shall be determined by an administrative law judge. KRS  
13 342.735(1) requires the executive director [~~commissioner~~] to promulgate administrative  
14 regulations to expedite the payment of medical expense benefits. This administrative  
15 regulation establishes a procedure for the resolution of a medical dispute before an  
16 administrative law judge.

17 Section 1. Procedure for all medical disputes except those filed for chiropractic peer  
18 review governed by Section 7 of this administrative regulation. (1) A dispute regarding  
19 payment, nonpayment, reasonableness, necessity, or work-relatedness of a medical  
20 expense, treatment, procedure, statement, or service which has been rendered or will be

1 rendered under KRS Chapter 342 shall be resolved by an administrative law judge  
2 following the filing of a Form 112 (Medical Dispute).

3 (2) Form 112 may be filed by an employee, employer, carrier or medical provider.

4 (3)(a) The Form 112 shall be accompanied by the following items:

5 1. Copies of all disputed bills;

6 2. Supporting affidavit setting forth facts sufficient to show that the movant is entitled  
7 to the relief sought;

8 3. Necessary supporting expert testimony; and

9 4. The final decision from a utilization review or medical bill audit with the supporting  
10 physician opinion.

11 (b) A single Form 112 may encompass statements, services, or treatment previously  
12 rendered as well as future statements, services, or treatment of the same nature or for the  
13 same condition, if specifically stated.

14 (4)(a) If the contested expense or medical procedure or treatment is subject to  
15 utilization review, the utilization review process shall be exhausted pursuant to 803 KAR  
16 25:190 before any party may file a medical dispute with the Office of Workers' Claims.

17 (b) Pursuant to 803 KAR 25:190, a party shall have thirty (30) days following an  
18 independent utilization review decision to file a medical dispute.

19 (5) Repeated filing of identical Form 112's concerning the same subject matter shall  
20 not be necessary if an administrative law judge has ruled on both the past expenses and  
21 the necessity of future expenses.

1 (6) A party aggrieved by a decision of the administrative law judge in a medical  
2 dispute may appeal to the Workers' Compensation Board by following the procedures  
3 established in 803 KAR 25:010, Section 21.

4 Section 2. No claim filed.

5 (1)(a) [(4)(a)] If an application for adjustment of claim concerning the injury or disease  
6 which is the subject of the dispute has not been filed, copies of the Form 112 and  
7 attachments sufficient to serve the other parties, including the employee, employer, and  
8 medical provider, shall be filed with the executive director ~~[commissioner]~~, who shall make  
9 service on the named parties.

10 (b) A written response to the Form 112 may be filed by an opposing party if it meets  
11 the following:

12 1. A response shall be filed within twenty (20) days of the date of service by the  
13 executive director;

14 2. A response shall be served on the executive director and all other parties within the  
15 twenty (20) days described in paragraph 1; and

16 3. A response shall be accompanied by an affidavit setting forth facts sufficient to  
17 show that the movant is not entitled to the relief sought. [An opposing party may, within  
18 twenty (20) days after service by the commissioner, file a response, accompanied by  
19 affidavit setting forth facts sufficient to show that the movant is not entitled to the relief  
20 sought.

21 ~~—(c) A response shall be served on the commissioner and all other parties within the~~  
22 ~~twenty (20) day limit established in paragraph (b) of this subsection.]~~

1       (c) [(d)] The dispute shall be assigned to the Frankfort motion docket, where it shall be  
2       summarily decided upon the pleadings or assigned for further proceedings before an  
3       administrative law judge.

4       Section 3. Claim filed.

5       (1) [(5)] If an application for adjustment of claim is pending concerning the injury or  
6       disease which is the subject of the dispute, the movant shall file a Form 112 with the  
7       executive director [~~commissioner~~] and shall also serve copies on the other parties of  
8       record.

9       (2)(a) The movant shall [~~further~~] file a motion to join the medical provider as a party to  
10      the claim; and[-]

11      (b) This motion shall conform with the requirements of 803 KAR 25:010, Section 4.

12      Section 4. Post Award.

13      (1) [(6)] Following resolution of a workers' compensation claim by final order, a motion  
14      to reopen pursuant to 803 KAR 25:010, Section 4(6), shall be filed in addition to the Form  
15      112.

16      (a) Unless utilization review has been initiated, the motion to reopen and Form 112  
17      shall be filed within thirty (30) days following receipt of a complete statement for services  
18      pursuant to 803 KAR 25:096.

19      (b) The motion to reopen and Form 112 shall be served on the parties, upon the  
20      employee, even if represented by counsel, and upon the medical providers whose  
21      services or charges are at issue.

22      (c) If appropriate, the pleadings shall also be accompanied by a motion to join the  
23      medical provider as a party.

1        (d) [(e)] This dispute shall be assigned to the Frankfort motion docket, where it shall be  
2        either summarily decided upon the pleadings, or assigned to an administrative law judge  
3        for further proof time and final resolution.

4        (e) The employer shall bear the burden of going forward by filing a Motion to Reopen  
5        and Form 112 when the dispute:

6        1. Concerns services which have been rendered to the employee; or

7        2. Relates to causation or other issues not subject to utilization review.

8        (f) If the dispute concerns a request for pre-authorization or precertification of a  
9        medical service which has been denied following utilization review, the burden of going  
10       forward shifts to the employee and shall be filed pursuant to the requirements of 803 KAR  
11       25:012 and 803 KAR 25:190.

12       (2) [(7)](a) Except as provided by paragraph (b) of this subsection, a Form 112 shall  
13       be accompanied by a motion for a partial remand to the administrative law judge  
14       assigned to the claim if an appeal is pending before the Workers' Compensation Board  
15       concerning the injury or disease which is the subject of the dispute.

16       (b) If entitlement to medical services is dependent upon resolution of an issue on  
17       appeal, the Form 112 shall be accompanied by a motion to the Workers' Compensation  
18       Board to hold the Form 112 in abeyance pending a final decision on the appeal.

19       ~~[(8) If the contested expense is subject to utilization review, a medical dispute shall not~~  
20       ~~be filed prior to exhaustion of the utilization review process. The employer or its medical~~  
21       ~~payment obligor shall have thirty (30) days following the final utilization review decision to~~  
22       ~~file a medical dispute.~~

~~—(9) Repeated filing of identical Form 112's concerning the same subject matter shall not be necessary if an administrative law judge has ruled on both the past expenses and the necessity of future expenses.~~

~~—(10) A party aggrieved by a decision of the administrative law judge in a medical dispute may appeal to the Workers' Compensation Board by following the procedures established in 803 KAR 25:010, Section 20.]~~

Section 5[2]. In accordance with KRS 342.310, a sanction:

(1) Shall be assessed, as appropriate, if:

(a) An employer or a medical payment obligor challenges a bill without reasonable medical or factual foundation; or

(b) A medical provider, without reasonable foundation, submits a bill for a nonwork-related condition to an employer or its medical payment obligor; and

(2) May be imposed if a movant files a medical dispute prior to exhaustion of the required utilization review or medical bill audit procedures.

Section 6[3]. Expedited Medical Disputes. (1) If a dispute arises requiring expedited determination of the reasonableness, appropriateness or employer's liability for proposed medical care, the lack of which could lead to serious physical or mental disability or death, an employee or employer shall file a written request on Form 120EX to seek an expedited determination.

(2) The Form 120EX shall be filed with:

(a) An affidavit of the employee or other witness that the injury or disease which is the subject of the dispute is compensable under KRS Chapter 342 in the format prescribed in Appendix A;

1 (b) An affidavit of a physician which shall:

2 1. Explain why failure to obtain or undertake the proposed medical care within forty-  
3 five (45) days could lead to serious physical or mental disability or death of the employee;

4 2. Include:

5 a. The diagnosis of the patient;

6 b. The clinical and diagnostic findings upon which the diagnosis is based;

7 c. The proposed treatment;

8 d. The reason why immediate initiation of the proposed treatment is necessary; and

9 e. If feasible, an estimate of the cost of the proposed treatment; and

10 3. Comply with the format established in Appendix B; and

11 (c) Other affidavit or authenticated document necessary to demonstrate that the  
12 movant is entitled to the relief sought.

13 (3) [(2)] If a claim is currently assigned to an administrative law judge, the written  
14 request shall be directed to that administrative law judge.

15 (4) [(3)] The Form 120EX and attachments shall be filed in triplicate with the executive  
16 director [~~commissioner~~] who shall serve copies on the named parties.

17 (a) A respondent to a Form 120EX may file a response within ten (10) days of the date  
18 on which the Form 120EX is served by mail. Service shall be deemed complete the third  
19 day after mailing by the executive director [~~commissioner~~].

20 (b) A response shall be accompanied by an affidavit setting forth facts sufficient to  
21 demonstrate that the movant is not entitled to the relief sought, and shall be served on the  
22 other parties by the respondent.



1 (4) The administrative law judge may refer the matter to a worker's compensation  
2 specialist or an ombudsman to attempt to effectuate a resolution of the dispute.

3 (5) The administrative law judge to whom a request for expedited determination of  
4 medical issues is assigned shall issue a ruling within seven (7) days after expiration of the  
5 response time.

6 Section 7. Chiropractic Peer Review.

7 (1)(a) The Chiropractic Peer Review committee shall be appointed by the Executive  
8 Director of the Office of Workers' Claims;

9 (b) The committee shall contain five (5) chiropractors who:

10 1. Shall have completed a minimum of sixty (60) hours of utilization review training at  
11 a chiropractic college accredited by the Council on Chiropractic Education; and

12 2. Shall annually complete a six (6) hour course in utilization review approved by the  
13 Kentucky Board of Chiropractic Examiners;

14 (c) Each committee member shall serve for a two (2) year term; and

15 (d) The jurisdiction of the committee shall be limited to:

16 1. Disputes over the reasonableness and necessity of chiropractic care and treatment;  
17 and

18 2. By agreement of the parties, issues on work-relatedness or causation.

19 (2)(a) A joint request for a chiropractic peer review shall be filed by a chiropractor and  
20 insurance carrier or self-insured employer for chiropractic peer review with the Office of  
21 Workers' Claims;

22 (b) A request shall be made by completing the Form EZ in full;



1 (c) The parties shall attach to the Form EZ all pertinent written materials or medical  
2 documents that are relevant to the dispute;

3 (d) The Form EZ and attachments shall be filed with the Office of Workers' Claims,  
4 Claims Assignment Section;

5 (e) The parties shall certify that a copy of the Form EZ and attachments have been  
6 served on the employee;

7 (f) The parties shall make payment of \$250 which shall be:

8 1. Attached to the Form EZ; and

9 2. Made payable to the Workers' Compensation Chiropractic Peer Review Committee,  
10 Inc.; and

11 (g) The parties agree upon the filing of a Form EZ to be bound by the professional  
12 opinions and factual findings of the reviewing member as to the specific issue in the  
13 dispute.

14 (3)(a) An administrative law judge shall rule upon the request for chiropractic peer  
15 review; and

16 (b) The administrative law judge may enter an order referring the matter for  
17 assignment to one of the members of the Chiropractic Peer Review Committee

18 (4)(a) The chiropractic peer review shall be done according to accepted professional  
19 standards by the assigned member;

20 (b) The reviewing member may request that the parties furnish additional information:

21 1. If a request for additional information is made, the information shall be provided no  
22 later than fifteen (15) days from the request; and

1 2. If the information is not timely provided, a finding may be made that no decision is  
2 possible; and

3 (c) The reviewing member shall make written findings on the dispute no later than  
4 forty-five (45) days of an assignment.

5 (5) If a party disagrees with the written findings of the Chiropractic Peer Review  
6 Committee member, the party shall appeal the findings to an administrative law judge  
7 within fifteen (15) days from the filing date of the written findings.

8 (6) If an appeal is not filed with the Office of workers' Claims within fifteen (15) days of  
9 the date of filing of the member's written findings, the written findings of the Chiropractic  
10 Peer Review Committee member shall be deemed final and binding as to the specific  
11 issue filed on the Form EZ and shall not constitute a legal finding for any other purpose.

12 Section 8 [4]. Incorporation by Reference. (1) The following material is incorporated by  
13 reference:

14 (a) Form 112, "Medical Dispute", (June, 2000 Edition), Office [~~Department~~] of Workers  
15 Claims; [~~and~~]

16 (b) Form 120EX, "Request for Expedited Determination of Medical Issue", (July 14,  
17 1994 Edition), Office [~~Department~~] of Workers Claims; and

18 (c) Form EZ, "Joint Petition for Referral to Chiropractic Peer Review", (August 2007  
19 Edition).

20 (2) This material may be inspected, copied, or obtained, subject to applicable  
21 copyright law, at the Office [~~Department~~] of Workers Claims, Monday through Friday, 9  
22 a.m. to 4 p.m., at [~~the following locations:~~

1 —(a) Prevention Park, 657 Chamberlin [~~To Be Announced~~] Avenue, Frankfort,  
2 Kentucky 40601[;

3 —(b) ~~410 West Chestnut Street, Louisville, Kentucky 40202;~~

4 —(c) ~~220B North 8th Street, Paducah, Kentucky 42001; or~~

5 —(d) ~~101 Summit Drive, Pikeville, Kentucky 41501].~~

6 APPENDIX A

7 AFFIDAVIT OF EMPLOYEE

8 Affiant, (Name), first being duly sworn, states that the attached Request for Expedited  
9 Determination of Medical Issue (Form 120EX) concerns treatment for a condition  
10 compensable under the Kentucky Workers' Compensation Act. Affiant further states as  
11 follows:

12 1. Date and time of work-related injury or date on which occupational disease was  
13 discovered:

14 2. Brief description of how injury occurred or how occupational disease was acquired:

15 3. Date and identity of person to whom notice of injury or occupational disease was  
16 given:

17 4. Medical treatment at issue:

18 5. Attempts, if any, to obtain approval for contested treatment:

19 Signature:

20 STATE OF:

21 COUNTY OF:

22 Subscribed and sworn to before me by (name) this (day) day of (month), (year).

23 Notary Public:

1 My commission expires:

2 APPENDIX B

3 AFFIDAVIT OF PHYSICIAN

4 EXPEDITED MEDICAL DISPUTE

5 Affiant (Name), a physician whose area of specialization is (specialization), first being  
6 duly sworn, states that the attached Request for Expedited Determination of Medical  
7 Issue (Form 120EX) concerns a work-related injury or disease.

8 (1) The following medical care is required: (describe proposed medical care)

9 (2) The current working diagnosis is as follows:

10 (3) The proposed treatment is medically necessary because:

11 (4) The estimated cost of the proposed treatment is:

12 Affiant further states that failure of (Name of workers'  
13 compensation patient) to obtain or undertake this proposed medical care within the next  
14 forty-five (45) days could lead to serious physical or mental disability or death because:

15 Signature:

16 W.C. Medical Index No.:

17 Address:

18 STATE OF:

19 COUNTY OF:

20 Subscribed and sworn to before me by (name) this (day) day of (month), (year).

21 Notary Public:

22 My commission expires:



William F. Emrick, Executive Director  
Office of Workers' Claims

8-14-2007

Date

A public hearing on this administrative regulation shall be held on September 24, 2007, at 10:30 a.m. (EST) at the offices of the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, General Counsel  
Office of Worker's Claims  
Prevention Park  
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Frankfort, Kentucky 40601  
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